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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2817 OF 2006

Shri Ashok Kumar Gangaprasad Jaiswal .. Petitioner

V/s.

The State of Maharashtra .. Respondent

Mr.Cliford Martis for petitioner.
Mr.P.A.Pol-APP-State.

CORAM : R.S. MOHITE, J.

DATE : 27TH NOVEMBER, 2007.

P.C. :-

. This writ petition is filed against the concurrent finding of the lower courts dismissing the petitioner's complaint for alleged offences punishable under section 324, 386, 447 read with 34-114 of Indian Penal Code as against accused no.2 and under section 116, 217 read with 34-114 of Indian Penal Code against accused nos.3 and 4.

2. The accused nos.3 and 4 are police officers and the allegation is that they failed to act on the complaint against accused nos. 1 and 2 who are his

real brothers. On perusal of the complaint and from his evidence it appears that in para 9 of the complaint one of the incidents is said to have taken place on 6.7.2004 wherein the accused no. 1 entered into the house of the complainant without permission and asked that a suit pending between the parties should be withdrawn. Since the complainant did not agree, the accused no.2 slapped on his right ear and damaged her right ear. Another incident mentioned by the complainant is said to have taken place on 11.7.2004 at 4.00 p.m. During this incident the accused no. 1 and 2 are alleged to have entered the house of the complainant armed with knives and forcibly having taken a statement from the complainant.

3. In the statement given by the complainants wife Kusum, she gave a completely different version about the incident dated 6.7.2007. She has not supported the case of the complainant that accused no.2 has slapped the complainant. On the contrary, she has introduced the knife in the hands of accused no.1. She has not at all talked about the incident of dated 11.7.2004. I find that the version given by the witness for the complaints wife varies with the complaint. The witness is not reliable.

4. Yet another point sought to be made out is that the acquittal under section 386 was incorrect as the accused nos. 1 and 2 had effected robbery on 6.7.2004. On perusing the complaint, I find that there is no averment in the complaint relating to the robbery effected by accused nos. 1 and 2. In reference to the paragraph no. 6, the complaint was made only relating to the non recording of a robbery by the police officer i.e. accused no.4. This is also the position of the verification statement. The statement of some other witnesses have been recorded, but they are not eye witnesses to the robbery.

5. In my view, the process under section 380 has not been issued correctly as there is nothing in the complaint to indicate the actual robbery. The averment only pertains to lodging of complaint. There is no substance in the petition. Hence, the petition is rejected.

(R.S. MOHITE, J.)